



## Minutes Formal City Council Meeting September 8, 2011

Minutes of the Formal Council Meeting of Thursday, September 8, 2011, held at 7:30 p.m. in the Harry E. Mitchell Government Center, Tempe City Hall, City Council Chambers, 31 E. Fifth Street, Tempe, Arizona.

### **COUNCIL PRESENT:**

Mayor Hugh Hallman  
Councilmember Robin Arredondo-Savage  
Councilmember Shana Ellis  
Councilmember Mark W. Mitchell  
Councilmember Onnie Shekerjian  
Councilmember Corey D. Woods

### **COUNCIL ABSENT:**

Vice Mayor Joel Navarro

### **STAFF PRESENT:**

Charlie Meyer, City Manager  
Andrew Ching, City Attorney  
Brigitta M. Kuiper, City Clerk  
Ken Jones, Finance and Technology Director

Jeff Kulaga, Assistant City Manager  
Bill Gallauer, Licensing Specialist  
Michael Greene, Central Services Manager  
Various Department Heads or their representatives

Mayor Hallman called the meeting to order at 8:38 p.m.

1. Councilmember Woods gave the invocation.
2. Mayor Hallman led the audience in the **Pledge of Allegiance**.

### **3. MINUTES**

#### **A. Approval of Council Meeting Minutes**

**Motion by Councilmember Shekerjian to approve the following COUNCIL MEETING MINUTES; second by Councilmember Arredondo-Savage. Motion passed unanimously on a voice vote 6-0.**

1. Formal Council Meeting - August 18, 2011
2. Issue Review Session - August 18, 2011
3. Executive Session - August 18, 2011
4. Neighborhood Quality of Life and Revitalization Council Committee - May 26, 2011
5. Technology, Economic & Community Development Council Committee - June 17, 2011
6. City Council Special Meeting - August 22, 2011

#### **B. Acceptance of Committee, Board & Commission Meeting Minutes**

**Motion by Councilmember Shekerjian to accept the following COMMITTEE, BOARD AND COMMISSION MEETING MINUTES; second by Councilmember Arredondo-Savage. Motion passed unanimously on a voice vote 6-0.**

1. Board of Adjustment - April 28, 2010
2. Double Butte Cemetery Advisory Board - April 20, 2011
3. Committee for Youth, Families and Community - May 10, 2011
4. Development Review Commission - July 26, 2011
5. Hearing Officer - August 2, 2011
6. Special Events Task Force - August 23, 2011
7. Merit System Board - August 26, 2011

#### 4. REPORTS AND ANNOUNCEMENTS

##### A. Mayor's Announcements

1. Detective Tim Barber Donors Recognition  
Mayor Hallman announced that the Detective Tim Barber donors recognition will be postponed until the September 22, 2011 Formal Council Meeting. He asked the audience to join him in a moment of silence for Detective Barber.
2. Community Preparedness Exercise & Fair / Holistic Urgent Recovery Training / Healing Field  
Mayor Hallman announced that Holistic Urgent Recovery Training (HURT) is a program that trains trainers at faith-based organizations. The Community Preparedness Exercise and Fair is a community network of resources to assist disaster victims. On Saturday, September 10, 2011, training will take place at Monti's restaurant, near the Healing Field at Tempe Beach Park. On Saturday, October 22, 2011, the Community Preparedness Exercise and Fair will be held at Grace Community Church.
3. Board and Commission Reappointments  
Agenda item 5A1 details board and commission reappointments.
4. Fall 2011 Board and Commission Recruitment  
Mayor Hallman announced that there are 82 vacancies on Tempe's boards and commissions. The recruitment period ends at the close of business on Friday, October 7, 2011.

##### B. Manager's Announcements

Charlie Meyer, City Manager, announced that there is an agenda item at this meeting to approve a memorandum of understanding assignment to the United Arizona Employees Association (UAEA). A certification process took place that recognizes this new employee group comprised of non-supervisory City employees. UAEA representatives in attendance were acknowledged.

#### 5. AGENDA

All items in these minutes identified with an asterisk (\*) **are public hearing items**. All items listed on the agenda are approved with one council action. Items scheduled for Introduction/First Public Hearing will be heard but not adopted at this meeting. Items scheduled for Second Public Hearing/Final Adoption will be voted upon at this meeting.

Mayor Hallman announced consideration of the **AGENDA** items.

**Motion by Councilmember Woods to approve the Agenda with the exception of items 5A8, 5B1, 5B2, 5C9 and 5D3, which were removed for separate consideration, and agenda items 5C1 and 5C8 which were removed/deleted from the Agenda; second by Councilmember Shekerjian. Motion passed on a roll call vote 6-0.**

**A. Miscellaneous Items**

- A1. Approved board and commission reappointments.

<b>COMMENTS</b>	N/A
<b>DOCUMENT NAME</b>	20110908ccb01 0102-01-00 BDS, COMMISSIONS, COMMITTEES ADM

**Development Review Commission**

Kolby Granville	Reappoint to a term expiring 7/1/14 (FT1)
Tom Oteri	Reappoint to a term expiring 7/1/14 (FT3)

**Electrical Code Advisory Board of Appeals**

Mike Barbes	Reappoint to a term expiring 2/10/14 (FT2)
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(FT1) – First term full term  
(FT2) – Second and final term  
(FT3) – Third and final term

- A2. Approved the 2011-2012 Greater Phoenix Economic Council (GPEC) contract for regional marketing and business attraction services in the amount of \$53,641. **(Contract #2011-120)**

<b>COMMENTS</b>	Sufficient funding for the GPEC contract resides in cost center 2710, account 7009
<b>DOCUMENT NAME</b>	20110908mmcd01 ECONOMIC DEVELOPMENT PROGRAM (0111- 03)

- \*A3. Held a public hearing and recommended the approval of a Series 07 beer & wine bar liquor license for Millenium Golf Management, LLC, dba The Caddy Shack @ Ken McDonald, 800 East Divot Drive.

<b>COMMENTS</b>	Ralph Jay Hawley is the Agent for this application.
<b>DOCUMENT NAME</b>	20110908fsap01 200484 – LIQ LIC (0210-02)

- \*A4. Held a public hearing and recommended the approval of a Series 12 restaurant liquor license for Millenium Golf Management, LLC, dba The Caddy Shack @ Ken McDonald, 800 East Divot Drive.

<b>COMMENTS</b>	Ralph Jay Hawley is the Agent for this application.
<b>DOCUMENT NAME</b>	20110908fsap02 200484 – LIQ LIC (0210-02)

- \*A5. Held a public hearing and recommended the approval of a Series 12 restaurant liquor license for Thirsty Lion - Tempe, LLC, dba Thirsty Lion Pub & Grill, 2000 East Rio Salado Parkway, #K-1.

<b>COMMENTS</b>	Wesley Wayne Curl is the Agent for this application.
<b>DOCUMENT NAME</b>	20110908fsap03 200736 – LIQ LIC (0210-02)

- \*A6. Held a public hearing and recommended the approval of a Series 07 beer & wine bar liquor license for Millenium Golf Management, LLC, dba The Caddy Shack @ Rolling Hills, 1405 North Mill Avenue.

**COMMENTS** Ralph Jay Hawley is the Agent for this application.  
**DOCUMENT NAME** 20110908fsap04 200483 – LIQ LIC (0210-02)

- \*A7. Held a public hearing and recommended the approval of a Series 12 restaurant liquor license for Millenium Golf Management, LLC, dba The Caddy Shack @ Rolling Hills, 1405 North Mill Avenue.

**COMMENTS** Ralph Jay Hawley is the Agent for this application.  
**DOCUMENT NAME** 20110908fsap05 200483 – LIQ LIC (0210-02)

- \*A8. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION. SEE BELOW FOR DISCUSSION AND ACTION.** Hold a public hearing to recommend the denial of a Series 06 bar liquor license for Antars Sports Bistro I, LLC, dba Antars Sports Bistro, 699 South Mill Avenue, #201.

- A9. Authorized the Mayor to execute a First Amendment to the Rehabilitation and License Agreement with Veterans Memorial – Tempe LLC, an Arizona Limited Liability Company for the rehabilitation of the Ash Avenue Abutment and construction of Phase I of the Veterans Memorial in Tempe Beach Park. **(Contract #2009-199A)**

**COMMENTS** Approval of the First Amendment will allow the Veterans Memorial - Tempe LLC to start construction once the required development permits and approvals are complete.  
**DOCUMENT NAME** 20110908CDNR01 VETERANS MEMORIAL (0112-07-07)

**B. Award of Bids/Contracts**

- B1. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION. SEE BELOW FOR DISCUSSION AND ACTION.** Request approval of a one-year sole source agreement with four, one-year renewal options with Motorola Solutions, Inc. for the purchase of Motorola equipment, software and related repair and maintenance services for the City's municipal and public safety radio and dispatch systems.

- B2. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION. SEE BELOW FOR DISCUSSION AND ACTION.** Request approval to award one-year contracts with four, one-year renewal options to Action Container Solutions, Waste & Recycling Plastic Containers, Inc. and Rotational Molding, Inc. for the purchase of refuse containers for use by the Public Works Department.

- B3. Awarded a professional services contract with Kimley-Horn and Associates, Inc. for design of pedestrian improvements on University Drive between Priest Drive and Mill Avenue. **(Contract #2011-123)**

**COMMENTS** Total cost for the design services contract is \$149,798.  
**DOCUMENT NAME** 20110908pwwdr02 STREETSCAPE THEME (0809-07)  
PROJECT NO. 6004501

- B4. Awarded a professional services contract with Dibble & Associates Consulting Engineers, Inc. for design of ASU perimeter metering and a new water main on Rural Road between University Drive and Apache Boulevard. **(Contract #2011-124)**

<b>COMMENTS</b>	Total cost for the design services contract is \$298,690.
<b>DOCUMENT NAME</b>	20110908pwdr03 WATERMAIN CONSTRUCTION (0810-06) PROJECT NO. 3203511

**C. Ordinances and Items for Introduction/First Hearing - These items will have two public hearings before final Council action**

\*C1. **THIS ITEM WAS REMOVED/DELETED FROM THE AGENDA.** Introduction and first public hearing to adopt an ordinance authorizing the Mayor to execute a license agreement with Electric Transportation Engineering Corporation, dba ECotality North America, to use and occupy City property to install, maintain, and operate electric vehicle charging equipment through the use of Department of Energy funding through the American Recovery and Reinvestment Act. The second public hearing is scheduled for September 22, 2011.

\*C2. Introduced and held the first public hearing to adopt an ordinance amending the Tempe City Code, Chapter 8, relating to Buildings and Building Regulations, by repealing the existing 2006 International Codes and adopting the 2009 edition of the International Codes. The second public hearing was scheduled for September 22, 2011.

<b>COMMENTS</b>	This ordinance adopts the 2009 editions of the International Codes to establish the minimum requirements to safeguard the public health, safety, general welfare, and energy conservation in the built environment.
<b>DOCUMENT NAME</b>	20110908cdml01 TCC CH 8 – BUILDINGS AND BUILDING REGULATIONS (0503-08) ORDINANCE NO. 2011.33

\*C3. Introduced and held the first public hearing to adopt an ordinance for a Historic Overlay for the Harris House located at 823 South Maple Avenue. The second public hearing was scheduled for September 22, 2011.

<b>COMMENTS</b>	Request for the HARRIS HOUSE (PL110191) (Jenny Lucier & Dan O'Neill property owners; City of Tempe -Tempe Historic Preservation Office, applicant) consisting of Historic designation and listing in the Tempe Historic Property Register for the Harris House, consisting of one (1) lot on approximately 0.16 acres, located at 823 South Maple Avenue in the R-3, Multi-Family Residential Limited District. The request includes the following: HPO 11004 (Ordinance No. 2011.19) – Historic Designation consisting of one (1) lot.
<b>DOCUMENT NAME</b>	20110908cdjn01 PLANNED DEVELOPMENT (0406) ORDINANCE NO. 2011.19

\*C4. Introduced and held the first public hearing to adopt an ordinance for a Zoning Map Amendment and Planned Area Development Overlay and to adopt a resolution authorizing the Mayor to execute a General Plan Amendment for San Capella-Mark-Taylor Development located at 1155 West Elliot Road. The second public hearing was scheduled for October 20, 2011.

<b>COMMENTS</b>	Request for SAN CAPELLA – MARK-TAYLOR DEVELOPMENT (PL110258) (CNL Income FEC Tempe, LLC. property owner; Huellmantel & Affiliates, applicant) consisting of a new 384 unit multi-
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family residential development with two and three-story buildings, totaling up to 507,000 sf. in building area on approximately 19.5 acres, located at 1155 West Elliot Road in the GID, General Industrial District and within the Southwest Tempe Overlay District. The request includes the following:

GEP11002 (RESOLUTION NO. 2011.81) – General Plan Projected Land Use Map Amendment from “Commercial” to “Residential” on 19.5 acres.

ZON11004 (ORDINANCE NO. 2011.39) – Zoning Map Amendment from GID, General Industrial District to R-4, Multi-Family Residential General District on 19.5 acres.

PAD11010 (ORDINANCE NO. 2011.39) – Planned Area Development Overlay, modifying the general development standards, to reduce the required vehicle parking from 799 to 727 spaces and reduce the required bicycle parking from 282 to 76 spaces, all on 19.5 acres.

**DOCUMENT NAME** 20110908cdri01 PLANNED DEVELOPMENT (0406) ORDINANCE NO. 2011.39 RESOLUTION NO. 2011.81

- \*C5. Introduced and held the first public hearing to adopt an ordinance for a Planned Area Development Overlay for the Jones Studio located at 205 South Wilson Street. The second public hearing was scheduled for September 22, 2011.

**COMMENTS** Request for the JONES STUDIO (PL110207) (Melissa Farling, Jones Studio, Applicant; Edward Jones, Jones Studio Inc., property owner) consisting of a one-story office building, with approximately 6,354 s.f., on .36 net acres, located at 205 South Wilson Street in the GID, General Industrial District. The request includes the following:  
PAD11005 (Ordinance No. 2011.29) – Planned Area Development Overlay to reduce the required front yard setback from 25'-0" to 6'-0" and a reduced side yard setback from 6 ft. to 0 ft. along the south side and to reduce the required parking from 21 to 16.

**DOCUMENT NAME** 20110908cddk01 PLANNED DEVELOPMENT (0406) ORDINANCE NO. 2011.29

- \*C6. Introduced and held the first public hearing to adopt an ordinance for a Historic Overlay for the McGinnis House located at 915 South Maple Avenue. The second public hearing was scheduled for September 22, 2011.

**COMMENTS** Request for the MCGINNIS HOUSE (PL110192) (Maple Ash Conservancy LLC. property owners; City of Tempe -Tempe Historic Preservation Office, applicant) consisting of Historic designation and listing in the Tempe Historic Property Register of the McGinnis House, consisting of one (1) lot on approximately 0.16 acres located at 915 South Maple Avenue in the R-3, Multi-Family Residential Limited District. The request includes the following: HPO 11005 (Ordinance No. 2011.18) – Historic Designation consisting of one (1) lot.

**DOCUMENT NAME** 20110908cdjn02 PLANNED DEVELOPMENT (0406) ORDINANCE NO. 2011.18

- \*C7. Introduced and held the first public hearing to adopt an ordinance for a Zoning Map Amendment and Planned Area Development Overlay for The District located at 941 East Apache Boulevard. The second public hearing was scheduled for September 22, 2011.

**COMMENTS**

Request for THE DISTRICT (PL110169) (Tara Waldier, RB Tempe LLC, Scott E. Baer, Baer's Den, and Charles and Elsa Fong, Spence Avenue Apartments, property owners; Nick Wood, Esq., Snell & Wilmer LLP, applicant) consisting of a five story, 639,589 sf. 279 unit student housing complex with structured parking and ground floor retail plus a reconstructed one story 1,868 sf. Baer's Den bar, all on +/-5.616 acres (12 parcels, total), located at 941 East Apache Boulevard in the CSS, Commercial Shopping and Service District, the R-4, Multi-Family Residential General District and with 4 parcels with a P.A.D., Planned Area Development Overlay District and T.O.D., Transportation Overlay District. The request includes the following:

ZON11003 – (Ordinance No. 2011.41) Zoning Map Amendment from CSS, Commercial Shopping and Service to MU-4, Mixed-Use, High Density District on +/-3.427 acres (5 parcels) facing Apache, from CSS, Commercial Shopping and Service and R-4, Multi-Family Residential General to R-5, Multi-Family Residential High-Density District on +/-2.189 acres (7 parcels) facing Spence, and for insertion of +/-3.510 acres (8 parcels) into the T.O.D., Transportation Overlay District.

PAD11006 – (Ordinance No. 2011.41) Planned Area Development Overlay to establish development standards for density (in MU-4 District) and building height, building setbacks, building lot coverage and landscape lot coverage on +/-5.616 acres.

**DOCUMENT NAME** 20110908cdkko01 PLANNED DEVELOPMENT (0406)  
ORDINANCE NO. 2011.41

- \*C8. **THIS ITEM WAS REMOVED/DELETED FROM THE AGENDA.** Introduction and first public hearing to adopt an ordinance amending the Tempe City Code to add Code Section 19-101, to regulate parking at electric vehicle charging stations in the City of Tempe. The second public hearing is scheduled for September 22, 2011.

- \*C9. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION. SEE BELOW FOR DISCUSSION AND ACTION.** Introduction and first public hearing to adopt an Ordinance authorizing the Mayor to execute Amendment No. 2 to the Lease Agreement between City of Tempe and the Valley of the Sun Young Men's Christian Association (YMCA) for the continued lease of real property located at 7070 S. Rural Road Tempe, Arizona, a consent agreement with U.S. Bank National Association, and other related documents. The second public hearing is scheduled for September 22, 2011.

**D. Ordinances and Items for Second Hearing/Final Adoption**

- \*D1. Held the second and final public hearing and adopted **ORDINANCE NO. 2011.30** amending Chapter 16 of the Tempe City Code to clarify the taxability of sales of medical marijuana and related medical marijuana infused products for transaction privilege tax purposes by amending Section 16-100.

**COMMENTS** These proposed changes apply the changes adopted by the Municipal Tax Code Commission to clarify the taxability of sales of medical marijuana and related medical marijuana infused products.

**DOCUMENT NAME** 20110908fdpf01 TCC CH 16 - LICENSES, TAXATION & MISC BUS REGS, ETC. (0503-16) ORDINANCE NO. 2011.30

- \*D2. Held the second and final public hearing and adopted **ORDINANCE NO. 2011.31**, incorporating conforming changes to the Model City Tax Code as a result of the 2010 legislative session into Chapter 16 of the Tempe City Code relating to License, Privilege and Excise Taxes by amending Sections 16-415, 16-416, 16-417, 16-445, and 16-660.

**COMMENTS** Following each legislative session, Arizona cities and towns acting collectively through the Unified Audit Committee, review new laws to determine those areas of the Model City Tax Code that require adjustment to maintain or achieve conformity with State law. This committee meets with taxpayer advocates and business representatives to draft tax code changes, which are then forwarded to the Municipal Tax Code Commission for approval. These proposed changes apply the modifications adopted by the Municipal Tax Code Commission following the end of the 2010 legislative session to Tempe's Tax Code.

**DOCUMENT NAME** 20110908fdpf02 TCC CH 16 - LICENSES, TAXATION & MISC BUS REGS, ETC. (0503-16) ORDINANCE NO. 2011.31

- \*D3. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION. SEE BELOW FOR DISCUSSION AND ACTION.** Second and final public hearing to adopt an ordinance authorizing the mayor to execute a lease and memorandum of lease with ZarCalRes Tempe, LLC (Zaremba) with regard to West Sixth Apartments located at 111 West Sixth Street.

- \*D4. Held the second and final public hearing and adopted **ORDINANCE NO. 2011.35** authorizing the City Manager or his designee to negotiate and enter leases and related documents for the occupancy of space within the City-owned Tempe Transportation Center at 200 E. Fifth Street and leasable commercial space within the City-owned public garage at 117 E. Fifth Street.

**COMMENTS** N/A

**DOCUMENT NAME** 20110908cdmm01 REAL PROPERTY LEASES (0903) ORDINANCE NO. 2011.35

- \*D5. Held the second and final public hearing and adopted **ORDINANCE NO. 2011.28** authorizing the grant of a Power Distribution Easement to Salt River Project Agricultural Improvement at Tempe Marketplace. **(Contract #2011-126)**

**COMMENTS** The City of Tempe owns lot 23 of Tempe Marketplace and leases the property to Vestar as part of a Government Property Lease Excise Tax (GPLET) agreement. Vestar has asked the City to grant SRP an electrical easement, on lot 23, so that power can be provided to a methane burning device on the property adjacent to Tempe Marketplace.

**DOCUMENT NAME** 20110908cdcm02 UTILITY EASEMENT GRANTED (0904-02) ORDINANCE NO. 2011.28



- \*D6. Held the second and final public hearing and adopted **ORDINANCE NO. 2011.32** authorizing the Mayor to execute a lease (**Contract #2011-127**) and memorandum of land and improvements Lease with TEMPE RI, LLC, (**Contract #2011-127A**) with regard to the Marriot Residence Inn located at 125 East 5th Street.

**COMMENTS** Pursuant to the First Amendment to the Development and Disposition Agreement between the City and TEMPE RI, LLC, the City agreed to accept a conveyance of the property at 125 East 5th Street and to lease the property back to TEMPE RI, LLC, for a period of 15 years.

**DOCUMENT NAME** 20110908cdcm01COMMUNITY DEVELOPMENT/REDEVELOPMENT ADMINISTRATION (0403-01) ORDINANCE NO. 2011.32

- \*D7. Held the second and final public hearing and adopted **ORDINANCE NO. 2011.38** authorizing the Mayor to execute a Lease Agreement with the Tempe Community Action Agency for the office and program space within the Escalante Community Center. (**Contract #2011-128**)

**COMMENTS** TCAA will pay the City \$1.00 per year under the lease through September 2021.

**DOCUMENT NAME** 20110908kbc01 TEMPE COMMUNITY ACTION AGENCY - 2150 E. ORANGE (0903-36) ORDINANCE NO. 2011.38

#### **E. Resolutions**

- E1. Adopted **RESOLUTION NO. 2011.86** amending Tempe City Code, Appendix A – Schedule of Fees and Charges, Chapter 23, Parks and Recreation, related to sand volleyball court and Kiwanis Park neighborhood ramada rates.

**COMMENTS** This recommendation will make the sand volleyball court and Kiwanis Park neighborhood ramada rates consistent with similar facility rates throughout the City's park system. Permits will continue to be issued through the Community Services Department.

**DOCUMENT NAME** 20110908cssw01 MISCELLANEOUS FEES (0210-05) RESOLUTION NO. 2011.86

- E2. Adopted **RESOLUTION NO. 2011.90** authorizing the reallocation of assessments for The Pier at Town Lake Improvement District No. 180.

**COMMENTS** The modification will reallocate the assessments across Lots 1-9B within this subdivision.

**DOCUMENT NAME** 20110908pw04 PIER 202 ID#180 (0805-80) RESOLUTION NO. 2011.90

- E3. Adopted **RESOLUTION NO. 2011.89** to accept grant funding from the City of Tucson High Intensity Drug Trafficking Area (HIDTA) to fund one sworn position for the Arizona HIDTA Investigative Support Center. (**Contract #2011-129**)

**COMMENTS** N/A

**DOCUMENT NAME** 20110908pdmk01 POLICE DEPT ADMIN (0606-02) RESOLUTION NO. 2011.89

- E4. Adopted **RESOLUTION NO. 2011.88** to accept grant funding from the City of Tucson High Intensity Drug Trafficking Area (HIDTA) to fund overtime related to the Maricopa County Methamphetamine Task Force. **(Contract #2011-130)**

**COMMENTS** N/A  
**DOCUMENT NAME** 20110908pdmk02 POLICE DEPT ADMIN (0602-02) RESOLUTION NO. 2011.88

- E5. Adopted **RESOLUTION NO. 2011.84**, a Memorandum of Understanding between the Tempe Supervisors Association (TSA) and the City of Tempe July 1, 2011 - June 30, 2013 and authorizing its execution. **(Contract #2011-131)**

**COMMENTS** N/A  
**DOCUMENT NAME** 20110908hrjoc01 TEMPE SUPERVISORS ASSOCIATION – MEET & CONFER (0303-08-05) RESOLUTION NO. 2011.84

- E6. Adopted **RESOLUTION NO. 2011.91** amending the July 1, 2011 - June 30, 2013 SEIU MOU negotiated with the "Non-supervisory employees in the public works department" and "All other non-supervisory employees" to reflect the newly designated representative organization for those two groups, the United Arizona Employees Association ("UAEA") and assigning the MOU to UAEA. **(Contract #2011-132)**

**COMMENTS** N/A  
**DOCUMENT NAME** 20110908hrjoc02 PUBLIC WORKS AND NON-SUPERVISORY UNION – MEET & CONFER (03-03-0803 and 03-03-0804) UNITED ARIZONA EMPLOYEE ASSOCIATION (0303-08-06) RESOLUTION NO. 2011.91

**AGENDA ITEM(S) REMOVED FOR SEPARATE CONSIDERATION:**

- \*A8. Held a public hearing and recommended the approval of a Series 06 bar liquor license for Antars Sports Bistro I, LLC, dba Antars Sports Bistro, 699 South Mill Avenue, #201, with conditions.

**COMMENTS** Jesus Manuel Altamirano is the Agent for this application.  
**DOCUMENT NAME** 20110908fsap06 200248 – LIQ LIC (0210-02)

Bill Gallauer, Licensing Specialist, stated that the liquor license application contained information that required further investigation. Presentation and discussion highlights include:

- The police investigation revealed that there was an owner that was not identified on the application; there was also indebtedness to that same person that was not disclosed on the application.
- No additional information has been provided to the Police Department to indicate that these two issues have been resolved.
- The staff recommendation for denial has not changed.
- The Arizona Department of Liquor Licenses and Control (AZ DLLC) provided the financial documents that show that Mr. and Mrs. Columbia have 50% of ownership of future businesses that the Antar's develop. The Tempe bar would have been one of those businesses.
- Financial documents also show that \$350,000 has been transferred from the Columbia's account into the Antar's account between October of 2010 and the beginning of 2011

- Only verbal communication has taken place between Mr. Gallauer and the applicant; no additional documentation has been provided.
- Removing the indebtedness from the situation would not be enough for the Police Department to change its recommendation; the ownership issue is the greater of the two unresolved issues
- It is difficult to prove a negative; in this case the individual cannot be located

David Ward, Corporate Counsel for Antars Sports Bistro I, stated that the issue in this matter is Michael Columbia. Presentation and discussion highlights include:

- Last year the Antars got involved with Mr. Columbia, who made an initial investment of \$350,000 into one of the companies, not the company being discussed this evening
- Since that time, Mr. Columbia has breached his contract
- Mr. Columbia was cooperative with the liquor license process in the beginning; he interviewed with the police and when asked for his fingerprints, he disappeared. As of this moment, the location of Mr. Columbia remains unknown.
- Efforts to contact Mr. Columbia have been unsuccessful
- Mr. Columbia has abandoned his partners and his investment
- It is necessary for this business to move forward
- A strategy is being developed to isolate Mr. Columbia from Mr. Antar and the Tempe project
- Mr. Columbia is not a member of the LLC that will own and operate the Tempe restaurant; he has no contact with the Tempe project; he is isolated from the bank accounts; he is isolated from the liquor license being considered this evening; he is not an applicant or owner of the license.
- There is an LLC that exists that Mr. Columbia is a member of, but that will be addressed later
- A lawsuit has been filed in Maricopa County Superior Court asking the court to dissolve the two LLCs that Mr. Columbia is a member of and which there are no assets
- Mr. Columbia may have a legal argument that he is a member of two defunct LLCs, but he does not have a claim of indebtedness; he breached contract and abandoned his investment
- There remains an obligation that has been determined to still exist
- Issues of who owes what will be determined in Superior Court
- Perhaps by the time AZ DLLC holds a hearing on this liquor license, the applicant may have these issues resolved

Pete Schelstraete, Antars Sports Bistro I representative, defined the problem as the Tempe Police Department stating that the application was filled out improperly – there's missing information or a hidden owner, which is not true. Presentation and discussion highlights include:

- There is no portion of the liquor application that provides for disclosure of a contingent claim or contingent liabilities.
- To ask the applicant to amend the application and document the estimated debt would be contrary to future litigation interests, and is not required by AZ DLLC
- AZ DLLC is interested in who is in control and who is managing the business
- Mr. Columbia not only breached his contract, but he caused extreme hardship to the location
- There is no provision on the application for Mr. Columbia to be provided for as an asset.
- The City Council needs to make a determination of who is in control, who is managing and who is owed the debt, as of today
- The application is honest; it was prepared properly.
- If a judge finds that Mr. Columbia is supposed to have an ownership interest in the LLC, then Mr. Columbia will need to file an Acquisition of Control request with AZ DLLC. That request will then be forwarded to the Tempe City Council for action. As of now, Mr. Columbia has no involvement.
- The documents that AZ DLLC provided to Tempe were given to AZ DLLC by the applicant.
- It is unfair to hold the Antars responsible; there will be future litigation
- There is no interim liquor license at this location; it is not open for business
- Antars Sports Bistro I is two weeks from having its liquor license issued and hiring employees

- The applicant studied under Chef Wolfgang Puck; this business would be a great addition to Mill Avenue
- If Council were to do anything other than recommend approval, then the license application will require a hearing by AZ DLLC, which will not occur until December 2011.
- If the license application is approved and there are no protests, then AZ DLLC will issue the liquor license within 15 days of approval.
- A question was raised as to why there was no contact with the Police Department staff since the August 18, 2011 Formal Council Meeting. The applicant's legal counsel outlined activities that took place in an attempt to resolve the situation during that timeframe. No contact was made with Police Department staff because there was no progress to report.
- The last contact with Mr. Columbia took place in March, 2011

David Antar, business owner, stated that he was contacted by Mr. Columbia's attorney approximately three months ago. Both he and his brother went to Mr. Columbia's home and had no success in contacting Mr. Columbia.

Additional discussion highlights:

- Perhaps an agreement could be prepared that would allow for revocation of the liquor license if Mr. Columbia were to stake a claim
- Mr. Columbia would need to file a court order to obtain any rights
- This is not a case of hidden ownership
- It was questioned whether or not a judge could override the AZ DLLC and Tempe City Council and reassign a liquor license to someone other than the applicant; it was concluded that it would be highly unlikely for that to occur
- Perhaps a bond could be produced to protect the City from Mr. Columbia seeking repayment
- A trustee could be appointed by the City of Tempe for contingent claims; this approach has been proposed to Mr. Columbia's attorney
- The applicant is willing to provide a bond, which would give the Antars incentive to resolve these issues
- The bond would exist until there is a judgment that extinguishes the interest in the LLCs and demonstrates that there is no debt liability associated with the \$350,000 that was invested. Once these issues have been resolved, the bond could be extinguished.
- Perhaps this application should be postponed until the September 22, 2011 Formal Council Meeting so that the applicant may obtain a bond from an insurance company. \$100,000 was the suggested bond amount.
- Whether it is contingent or non-existent, Mr. Columbia invested \$350,000 in this company for self purpose. Staff believes that Mr. Columbia has a potential ownership interest in this bar/restaurant. Perhaps the application could be amended to add Mr. Columbia's name with a notation included, for the sake of completeness, to the extent that he may assert a claim in the future. This may eliminate the fact that he has invested money, regardless of the fact that he is in breach, which could result in a claim. If the notation is on the application, then perhaps Mr. Gallauer would consider the application to no longer be incomplete.
- Council is unable to test whether or not Mr. Columbia is qualifiable as a liquor license applicant
- Council would like an assurance that the Antars will pursue a resolution to these issues; a significant incentive
- Perhaps a letter of credit could be considered
- A letter could be attached to the application stating the Mr. Columbia is in breach of contract and has no interest in this business
- The applicant could stipulate that if Mr. Columbia were to be awarded an interest in the license and/or the company, then the applicant would forfeit the Series 06 bar liquor license
- The role of the Council is to make a recommendation. If the recommendation is based on an attached

stipulation, it is questionable whether or not AZ DLLC will take that into consideration and whether or not that might trigger a hearing.

- Taking a two week break to prepare a security agreement was suggested
- Theresa Morse, representing the applicant, offered to complete a surrender of the liquor license form and have the owner sign and notarize that form. That form would be held in trust by the City of Tempe. If a breach of agreement occurred, the license would be surrendered to the AZ DLLC and there would be no recourse for Antars.
- A motion could be made for the denial of the liquor license; denial could be withdrawn upon presentation of the surrender of license in form and substance acceptable to the City Attorney, provided that a breach in the arrangements occurred and the applicant did not follow through with City expectations. At that time, the City would be in a position to submit the surrender of license in the event that Mr. Columbia, or others associated with him, successfully asserts an interest in the business in which this restaurant is held or the liquor license under discussion.
- A recommendation of approval was suggested, with the conditions noted above
- Concern was raised over the Council placing a condition with their recommendation to AZ DLLC
- The Police Department investigation has been completed
- Clarification was made that there is an "undisclosed" owner, not a "hidden" owner

Mayor Hallman postponed discussion on this agenda item to after the remaining agenda items removed from the agenda for separate consideration.

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- B1. Approved a one-year sole source agreement with four, one-year renewal options with Motorola Solutions, Inc. for the purchase of Motorola equipment, software and related repair and maintenance services for the City's municipal and public safety radio and dispatch systems. **(Contract #2011-121)**

<b>COMMENTS</b>	Total value of this agreement shall not exceed \$400,000 for the one-year initial term.
<b>DOCUMENT NAME</b>	20110818fst12 PURCHASES (1004-01)

Councilmember Shekerjian requested that this item be removed for separate consideration because it has the potential of costing over \$1 million; she asked staff to explain this item and its funding source.

Ken Jones, Finance and Technology Director, stated that the equipment being purchased under this contract can only be procured from Motorola; this is a purchase-on-demand contract. The funding source for this contract is the General Fund.

**Motion by Councilmember Shekerjian to approve agenda item 5B1; second by Councilmember Mitchell. Motion passed on a roll call vote 6-0.**

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- B2. Awarded one-year contracts with four, one-year renewal options to Action Container Solutions, Waste & Recycling Plastic Containers, Inc. and Rotational Molding, Inc. for the purchase of refuse containers for use by the Public Works Department. **(Contract #2011-122)**

<b>COMMENTS</b>	Total combined value of these contracts will not exceed \$250,000 during the initial one-year contract period.
<b>DOCUMENT NAME</b>	20110908fst04 PURCHASES (1004-01)

Councilmember Shekerjian requested that this item be removed for separate consideration because it has the potential of costing over \$1 million; she asked staff to explain this item and its funding source.

Michael Greene, Central Services Manager, stated that 10 vendors competed for this bid. Staff is recommending awarding contracts to Action Container Solutions, Waste & Recycling Plastic Containers, Inc. and Rotational Molding, Inc. as they were the lowest bidder by category and by price. The funding source for these contracts is the Solid Waste Fund. This agreement is estimated to cost approximately \$250,000 per year.

**Motion by Councilmember Shekerjian to approve agenda item 5B2; second by Councilmember Mitchell. Motion passed on a roll call vote 6-0.**

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- \*C9. Introduced and held the first public hearing to adopt an Ordinance authorizing the Mayor to execute Amendment No. 2 to the Lease Agreement between City of Tempe and the Valley of the Sun Young Men's Christian Association (YMCA) for the continued lease of real property located at 7070 S. Rural Road Tempe, Arizona, a consent agreement with U.S. Bank National Association, and other related documents. The second public hearing was scheduled for September 22, 2011.

<b>COMMENTS</b>	The Lease amount of \$1 per year will remain the same.
<b>DOCUMENT NAME</b>	20110908caef01 YMCA (0109-15) Ordinance No. 2011.43.

Councilmember Mitchell declared a conflict of interest on this agenda item. No vote was taken on agenda item 5C9 as this is the first public hearing on this agenda item.

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- \*D3. Held the second and final public hearing and adopted **ORDINANCE NO. 2011.36** authorizing the mayor to execute a lease (**Contract #2011-125**) and memorandum of lease with ZarCalRes Tempe, LLC (Zaremba) (**Contract #2011-125A**) with regard to West Sixth Apartments located at 111 West Sixth Street.

<b>COMMENTS</b>	The Government Property Lease Excise Tax (GPLET) lease is authorized in the Modification Agreement.
<b>DOCUMENT NAME</b>	20110908cdaws04 SOUTHEAST QUADRANT DOWNTOWN TEMPE (0403-02-06) ORDINANCE NO. 2011.36

Mayor Hallman stated that City Council formerly directed staff to ensure that \$50,000 is allocated to school districts. It is the Council's commitment to ensure that happens. The City Attorney will resolve the legal issues and follow through with that direction.

Councilmember Arredondo-Savage acknowledged Zaremba's investment in this community and stated that she looks forward to a healthy relationship/partnership in the years to come. She added that her "no" vote is due to concerns with the terms of the contract and the impacts that it makes upon other taxing entities and their bonding capacity. Her "no" vote is not about the project.

Mayor Hallman provided background on the Government Property Lease Excise Tax (GPLET) agreement with this developer and how Tempe benefits from that agreement. Street calming and 64 parking spaces valued at \$14,000 per space were noted benefits.

**Motion by Councilmember Shekerjian to approve agenda item 5D3; second by Councilmember Woods. Motion passed on a roll call vote 5-1 with Councilmember Arredondo-Savage voting nay.**

Discussion resumed on agenda item 5A8, Series 06 bar liquor license for Antars Sports Bistro I, LLC, dba Antars Sports Bistro, 699 South Mill Avenue, #201. The applicant's representatives worked with staff to prepare a signed and notarized surrender document for Council's consideration.

**Motion by Councilmember Arredondo-Savage to approve a Series 06 bar liquor license for Antars Sports Bistro I LLC, dba Antars Sports Bistro at 699 South Mill Avenue, #201 with the condition that the City of Tempe will hold a surrender of license document under the condition that if Michael Columbia, or any family member by blood or marriage, ever successfully demonstrates an interest in the business entity that owns this restaurant, bar and/or an interest in this liquor license, the City of Tempe may tender the surrender of license to the State Liquor Department. Second by Councilmember Shekerjian.**

Pete Schelstraete requested that the transcript of the motion be referenced to the surrender document for the record.

**Councilmember Arredondo-Savage amended the motion to include that a transcript of the motion and second be appended to the surrender of the license as the basis for the agreement that Mr. Antar has committed to. Second by Councilmember Shekerjian on the motion as amended. Motion passed on a roll call vote 6-0.**

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## **6. CURRENT EVENTS/COUNCIL ANNOUNCEMENTS/FUTURE AGENDA ITEMS**

Councilmember Arredondo-Savage

- The Education Partnerships Council Committee is making progress; a quarterly e-newsletter titled *Education Matters* has been developed, individuals can electronically subscribe to the newsletter
- She thanked Committee members for their hard work

Councilmember Shekerjian

- September is National Preparedness Month; the national theme this year is "A Time to Remember, A Time to Prepare". It is important to have a family emergency plan; resources are available on the web. The City has a Community Emergency Response Team "CERT" that trains volunteers.
- Thanked staff for the long range financial plan data. City departments made mid-year General Fund budget reductions totaling \$4.9 million. This is not the norm in government. A vast majority of citizens have not felt the budget cuts.

Councilmember Ellis

- Sunday, September 18, 2011, 8 am – noon – a modern Streetcar prototype will be located at Veterans Way and College Avenue for public viewing
- Nomination forms are available for the Bike Hero award
- This is the third consecutive year that Tempe has been awarded Playful City from KaBOOM
- Saturday, September 10, 2011 - Free youth program for ages 10-17 at the Tempe Town Lake. Kayaking, dragon boating, canoeing and paddle boarding will be free of charge.

Councilmember Mitchell

- Condolences to Tim Barber and his family
- Prostate on-site project provides materials on cancer prevention
- Tempe has been awarded Playful City from KaBOOM for the third consecutive year; Tempe is one of 151 playful cities in the nation.

Mayor Hallman

- PBS television station will be airing the songwriter showcase at the Tempe Center for the Arts
- Healing Field – 10<sup>th</sup> anniversary of the terrorist attack on the United States
- Condolences to Tim Barber and his family

## 7. PUBLIC APPEARANCES

### A. Scheduled

1. Citizens concerns regarding policing – No one spoke.

### B. Unscheduled

The meeting adjourned at 10:18 p.m.

I, Brigitta M. Kuiper, the duly-appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the above to be the minutes of the Formal City Council meeting of September 8, 2011, by the Tempe City Council, Tempe, Arizona.

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Hugh Hallman, Mayor

ATTEST:

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Brigitta M. Kuiper, City Clerk